IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2007

C O R A M :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

C.M.A. Nos.1928 & 1929 of 2007 and M.P. No.1 of 2007

Commissioner of Central Excise,
1, Foulk's Compound,
Anaimedu, Salem-636 001. .. Appellant in both the C.M.A.

Vs

1. M/s. Rajalakshmi Textile
Processors (P) Ltd.,
Erode. .. 1st Respondent in C.M.A. No.1928/07

2. M/s. S.S.M.Processing Mills Ltd.,
Komarapalayam. .. 1st Respondent in C.M.A. No.1929/07

3. Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan, Haddows Road,
Chennai - 600 006. .. 2nd Respondent in both the C.M.A.

Civil Miscellaneous Appeals filed against the impugned Final Order Nos.993 & 994 of 2005 dated 11.07.2005 on the file of the Customs, Excise And Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

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For Appellant : Mr.V.T.Gopalan
Additional Solicitor General of India
for Mr.R.Ramanlal Sr. C.C.G.

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J)

These appeals are filed against the final orders 993 & 994 of

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2005 dated 11.07.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. The facts in nutshell are as follows:

The respondents M/s.Rajalakshmi Textile Processors (P) Ltd., Erode and M/s.S.S.M.Processing Mills Ltd., Komarapalayam are engaged in the processing of cotton fabrics and man made fabrics falling under CETH 52 and 55 of schedule of CETA, 1985 and cleared the same on payment of duty under Bond. The assessees have obtained fabrics from outsiders for carrying out several processing work on job work basis and were availing deemed credit in respect of the inputs in terms of Rule 11 of erstwhile Cenvat Credit Rules, 2001 read with Notification No.53/2001 CE(NT) dated 29.06.2001 and Notification No.6/2002 CE(NT) dated 01.03.2002 at specified rates and utilised the credit for payment of duty on the clearances of the processed fabrics for home consumption. The credit so earned by the assessee in respect of input could not be utilised fully for payment of duty on home clearances, which has resulted in accumulation of credit in the credit account. The assessees have filed refund claims of unutilised credit on 28.03.2003 & 22.03.2002 respectively with the lower authority and the same was sanctioned only on 01.12.2003 and 02.12.2003 respectively, after expiry of three months from the date of filing of refund claims. Consequent to the sanctioning of the above said refund claims, the assessees have filed another refund claim for Rs.73,855/- on 14.01.2004 and 7,98,197/- on 18.12.2003 respectively with the Lower Authority, claiming the interest for belated refund of the claims. The Lower Authority on adjudicating the claims of interest rejected the same by order dated 27.2.2004 and 25.2.2004 respectively. Aggrieved by that, the assessees have filed appeals before the Lower Appellant Authority. The appeals were dismissed by orders dated 9.7.2004 and 12.7.2004. The assessees filed further appeal to the second respondent, CESTAT, Chennai. The Tribunal by reason of the impugned orders, set aside the orders of the lower authorities and allowed the appeals. Being aggrieved by that order, the appellant-Department have filed the above appeals.

3. The question of law formulated for entertainment of the above appeals is as follows:

> "Whether the Hon'ble CESTAT, South Zonal Bench, Chennai is correct in allowing the interest on the refunded amount of input duty credit for the period of delay beyond the period of three months prescribed under sub-section 1 of section 11BB since the unutilized portion of deemed credit is governed only by the provisions of specific law viz. Rule 5 of Cenvat Credit Rules, 2001/2002 and this specific provision of

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law govern with self-contained procedure setout under Notification No.11/2002CE(NT) dt.1.3.2002 ?
"

4. We heard the argument of the learned Additional Solicitor General of India.

5. Section 11B(2)(c) and 11BB of the Central Excise Act provides as follows:

11B. Claim for refund of duty

(1).....

(2) If, on receipt of any application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-

(a).....

(b).....

(c) Refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act."

Section 11BB.Interest on delayed refunds.- If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent. Per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty;

Provided where any duty ordered to be refunded under sub-section (2) of section 11-B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty."

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6. On the reading of the provisions, we are of the view that the approach of the Tribunal is correct. Under Modvat credit scheme, duty paid on inputs was allowed to be taken as credit for duty payable on clearance of the final products. The credit taken was nothing but for payment of duty. Thus, Modvat credit is a credit taken on payment of duty which credit could be utilised for the duty payable on the end product. Therefore, the Modvat credit is nothing but the credit available to the assessee on the assessee paying the duty on inputs at the time of clearance of final goods. Hence, credit could be regarded as excise duty available with the assessee for discharging its obligation of payment of duty on final goods. As per Section 11BB, if the refund of duty is not paid within the time stipulated therein, there is a statutory obligation on the part of the Department for payment of interest for the belated refund of the duty. As per the statutory provision, the respondent is entitled for interest for belated refund of the duty credit.

7. Further, it is an admitted case of the parties that the refund has been ordered under sub-section 2 of Section 11B vide clause (c) of the proviso to sub-section (c) of Section 11-B. The Board has also clarified that the provisions of Section 11BB of Central Excise Act are automatically attracted for any refund sanctioned beyond a period of three months. Section 11BB is applicable to any duty ordered to be refunded in sub-section 2 of Section 11-B.

8. Having regard to the statutory provisions, learned Additional Solicitor General appearing for the appellant has also not very seriously pressed the point. Hence, we find no reason to interfere with the orders passed by the Tribunal, which are impugned in these appeals. Therefore, the civil miscellaneous appeals are dismissed. Consequently, the connected M.P. is closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Customs, Excise
   & Service Tax
   Appellate Tribunal,
   South Zonal Bench
   Shastri Bhawan Annexe
   1 Floor, 26, Hadddows Road
   Chennai 6.

2. Commissioner of
   Central Excise,
   1, Foulk's Compound,
   Anaimedu, Salem-636 001.

+1cc to Mr.R.Ramanlaal,Advocate Sr 60929

TS (CO)
km/26.10.

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